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UNITED STATES OF AMERICA	)	IN THE COURT OF MILITARY
	)	COMMISSION REVIEW
	)	
	)	MOTION FOR LEAVE
	)	TO FILE BRIEF AS <i>AMICUS CURIAE</i>
	)	AND
	)	MOTION FOR LEAVE TO FILE OUT
	)	OF TIME
	)	
v.	)	Case No. 07-001
	)	Hearing Held at Guantanamo Bay, Cuba
	)	on 4 June 2007
	)	Before a Military Commission
	)	Convened by MCCO # 07-02
	)	Presiding Military Judge
OMAR AHMED KHADR	)	Colonel Peter E. Brownback III
	)	

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**TO THE HONORABLE JUDGES OF THE COURT OF MILITARY  
COMMISSION REVIEW**

The undersigned individuals respectfully move for leave to file the instant brief as *Amicus Curiae* in the case of United States of America v. Omar Ahmed Khadr.

**INTEREST OF AMICUS CURIAE**

Amici serve as Chief Counsel to the Office of the Chief Defense Counsel, Office of Military Commissions, US Department of Defense; Director of the Duke Law School Guantanamo Defense Clinic; Consultant to the Duke Law School Guantanamo Defense Clinic; Special Editorial Associate, Duke Law School Guantanamo Defense Clinic; and, Case Manager, Duke Law School Guantanamo Defense Clinic. The Amici have worked and written extensively in the relevant fields and seek now to offer the results of recent and highly relevant research for consideration by this court.

**Frank Fountain**, Esq. (LTC, U.S. Army JAGC (Ret.)). Mr. Fountain has served at the US Central Command as a Legal Advisor to the Commander in Chief during Iraq and Somalia operations, at the White House as the Chief Counsel to the President's Foreign Intelligence Advisory Board and Intelligence Oversight Board, at the US Senate as Senior Counsel to the Permanent Subcommittee on Investigations, and as the first Chief of Prosecutions for the international criminal court for Sierra Leone. He served as a prosecutor and defense counsel in numerous U.S. courts-martial. Now in private practice, he advises transnational businesses concerning international transactions and relations with US and foreign governments.

**Madeline Morris** (B.A., J.D., Yale University) is a Professor of Law at Duke University. She currently serves as Chief Counsel to the Office of the Chief Defense Counsel, Office of Military Commissions, U.S. Department of Defense. Professor Morris is a member of the Secretary of State's Advisory Board on International Law. She has served as Senior Legal Counsel, Office of the Prosecutor, Special Court for Sierra Leone; has provided consultation to the U.S. State Department, Office of War Crimes Issues; has served as Advisor on Justice to the President of Rwanda, as Special Consultant to the Secretary of the U.S. Army, as Co-convenor of the Inter-African Cooperation of Truth and Justice program, and as Consultant and Adjunct Faculty Member of the U.S. Naval Justice School. Ms. Morris is a member of the American Board of the American Bar Association's Central and East European Law Initiative, and a member of the Board of Advisors of the Center on Law, Ethics, and National Security at Duke University. Professor Morris teaches Public International Law, Use of Force in International Law, and international criminal law and has published widely in those fields.

**Stephen Bornick** received his Juris Doctor from Duke University School of Law in May 2007. Special editorial associate, Office of Professor Madeline Morris, Duke University School of Law.

**Landon Zimmer** received his Juris Doctor from Duke University School of Law in May 2007. Special editorial associate, Office of Professor Madeline Morris, Duke University School of Law.

**Allison Hester-Haddad** is a third year Juris Doctor candidate at Duke University School of Law in Durham, North Carolina.

### **ARGUMENT IN SUPPORT OF MOTION FOR LEAVE**

The legal issues encompassed within this brief are novel and necessarily warrant additional explanation. The argument presented herein has not been developed in the pleadings of this case or in any related case. The arguments made here bear directly on the outcome appropriately to be reached by this court.

The present brief focuses on Article 45 of Protocol I Additional to the Geneva Conventions of 1949 (1977). Article 45 has been officially recognized by the United States government as a customary feature of the international law of war. The provisions of Article 45 are directly relevant to the issues now before this court. However, the requirements of Article 45 have not previously been examined in considering the proper interpretation of the MCA. The present brief examines the requirements of Article 45 as they bear on the dismissal of Mr. Khadr's charges by the military commission in the proceedings below.

## **LEAVE TO FILE OUT OF TIME**

Rule 21(a) of Court of Military Commission Review Rules of Practice permits this Court, in its discretion, to extend the time limits of any “appropriate matter not specifically covered by” the rules therein. Moreover, Rule 21(c) authorizes the Court to, “upon motion and for cause shown, grant counsel an extension of time.” It is the firm belief of the Amici that without this proposed brief, the argument for the defense will not be complete or just. In the interest of justice, a complete and proper defense for Omar Khadr would rightfully include this brief. As such, we respectfully request the court to allow *Amici* a leave of the court to file this brief pursuant to Rule 16(a) at this time.

This brief is late because of a miscommunication concerning the filing deadline. Regretful that this brief has not been timely filed, we respectfully request that the court accept this brief filed out of time.

**Respectfully Submitted,**

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